

HOUSE BILL REPORT

SB 5733

As Passed House - Amended:

April 11, 2005

Title: An act relating to mandatory arbitration.

Brief Description: Concerning mandatory arbitration.

Sponsors: By Senators Kline, McCaslin, Rockefeller, Esser, Thibaudeau, Weinstein, Rasmussen and Eide.

Brief History:

Committee Activity:

Judiciary: 3/30/05, 3/31/05 [DPA].

Floor Activity:

Passed House - Amended: 4/11/05, 86-10.

Brief Summary of Bill (As Amended by House)

- Lowers the county minimum population threshold from 150,000 to 100,000 for purposes of determining in which counties mandatory arbitration must be used.
- Raises the maximum dollar amount of a legal controversy that is subject to mandatory arbitration from \$35,000 to \$50,000.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 10 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Bill Perry (786-7123).

Background:

Arbitration is a nonjudicial method for resolving disputes in which a third party is given authority to decide the case. Arbitration is intended to be a less expensive and time-consuming way of settling problems than taking a dispute to court. Parties are generally free to agree between themselves to submit an issue to arbitration. If parties agree to arbitration, the decision of the arbitrator is binding and is appealable to a court only on very limited

grounds. In some cases, however, arbitration is mandatory. That is, arbitration is required by a statute, and the parties have no choice in the matter.

This mandatory arbitration is required in the superior courts of counties of more than 150,000 population. It applies to cases in which the sole relief sought is a money judgment of \$15,000 or less. In smaller counties, either the superior court judges or the county legislative authority may adopt mandatory arbitration.

By a two-thirds vote, the judges of the superior court in any county with either the statutorily required or the self-imposed mandatory arbitration have the option to raise the ceiling for mandatory arbitration cases from \$15,000 to \$35,000. Superior court judges may also vote to use mandatory arbitration in child support cases, without limit as to the dollar amount of the support payments.

Counties may impose a filing fee of up to \$220 for mandatory arbitration filings.

Anyone agreed to by the parties may be an arbitrator. If agreement is not reached, the court will appoint an arbitrator, who must be a retired judge or a lawyer with at least five years membership in the bar. Arbitrators are paid at the same rate as judges pro tem of the superior court.

An award by an arbitrator may be appealed to the superior court. The superior court will hear the appeal "de novo." That is, the court on appeal will conduct a trial on all issues of fact and law essentially as though the arbitration had not occurred. Amounts awarded on appeal are not subject to any dollar limits. The mandatory arbitration statute provides that Washington Supreme Court rules will establish the procedures to be used in mandatory arbitration and that such rules may provide for the recovery of costs and "reasonable" attorney fees from a party who appeals and fails to improve his or her position. The rules make the award of costs and fees mandatory when an appealing party fails to improve his or her position, but make such awards discretionary when an appealing party withdraws the appeal. The determination of whether or not the appealing party's position has been improved is based on the amount awarded in arbitration compared to the amount awarded at the trial de novo.

Summary of Amended Bill:

The population threshold for counties that are required to have mandatory arbitration is lowered from 150,000 to 100,000.

The optional monetary ceiling for cases that are subject to mandatory arbitration is raised from \$35,000 to \$50,000.

These changes apply only to arbitrations filed on or after the effective date of the act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Mandatory arbitration has been a great success for many years. It has saved the equivalent of 25 judicial caseloads per year in cases that never go to trial. Many of these cases are small business disputes that tend to get resolved quickly in mandatory arbitration. The dollar amount limits on mandatory arbitration haven't been changed since 1987. Inflation alone calls for an increase to at least \$50,000. Because of the local option filing fee that can be imposed on mandatory arbitration, the program is more than paying for itself in high volume counties.

Testimony Against: Defendants tend to do better before juries than before arbitrators, many of whom seem to have a "split the difference" mentality. Increasing the ceiling on cases to \$50,000 will mean that more cases will be appealed to a trial de novo, and therefore that more cases will take longer to be resolved. Larger dollar amount cases tend to be more complicated. The system is not working well now and should not be expanded.

Persons Testifying: (In support) Larry Shannon, Washington State Trial Lawyers' Association.

(Opposed) Mel Sorensen, Washington Defense Trial Lawyers, Allstate Insurance Company, and Property Casualty Insurance; Jean Leonard, State Farm Insurance; and Cliff Webster, American Insurance Association.

Persons Signed In To Testify But Not Testifying: None.